

to the world that the U.S. military will always support our friends, deter our adversaries, and, if necessary, defeat them.

Lloyd Austin is the right person for the job. He has the experience, the vision, and the competence to run the largest agency in our government. I look forward to confirming his nomination shortly.

Afterward, the Senate must continue to install President Biden's team by confirming Secretaries of State, Homeland Security, and Treasury. We need Republican cooperation to confirm these nominees, but we expect that cooperation to continue. The continuity of our national security, military, and intelligence policy, as well as our ability to effectively respond to the current health and economic crises, depend on having these Cabinet officials confirmed.

Now, as I mentioned, the Senate will also conduct a second impeachment trial for Donald Trump. I have been speaking to the Republican leader about the timing and duration of the trial, but—make no mistake—a trial will be held in the U.S. Senate, and there will be a vote on whether to convict the President.

I have spoken to Speaker PELOSI, who informed me that the article will be delivered to the Senate on Monday.

Now, I have heard some of my Republican colleagues argue that this trial would be unconstitutional because Donald Trump is no longer in office—an argument that has been roundly repudiated, debunked by hundreds of constitutional scholars—left, right, and center—and defies basic common sense. It makes no sense whatsoever that a President or any official could commit a heinous crime against our country and then be permitted to resign so as to avoid accountability and a vote to disbar them from future office. It makes no sense.

Regardless, the purveyors of this unusual argument are trying to delay the inevitable. The fact is, the House will deliver the Article of Impeachment to the Senate. The Senate will conduct a trial of the impeachment of Donald Trump. It will be a full trial. It will be a fair trial. But make no mistake, there will be a trial, and when that trial ends, Senators will have to decide if they believe Donald John Trump incited the insurrection against the United States.

Now, over the course of elections in November and January, the American people chose to retire four Republican Senators and elect a Democratic majority to this Senate. The Senate must now take the basic step of passing an organizing resolution and setting up the rules for a Senate where there are 50 Members of either party.

Luckily, we have a clear precedent for what to do in this situation. In 2001, then-Majority Leader Lott and Minority Leader Daschle came together and agreed on a set of rules to govern a 50-50 Senate. We should follow that precedent.

We have offered to abide by the same agreement the last time there was a 50-50 Senate. What is fair is fair. That is precedent. We could organize the Senate today if both sides agreed to abide by the same rules as last time.

The Republican leader, however, has made an extraneous demand that would place additional constraints on the majority—constraints that have never been in place before. In fact, his proposal would remove a tool that the Republican leader himself used twice in just the last Congress to accelerate the confirmation of Republican nominees.

Leader MCCONNELL's proposal is unacceptable, and it won't be accepted. And the Republican leader knew that when he first proposed it.

Only 2 days ago, we celebrated the inauguration of a new President and the turning over of a new leaf. The American people want us to work together and move past the meaningless political fights and gridlock that have plagued us for too long.

It is time to get to work. A first step is for the Republican caucus to agree to follow the same precedent that governed the Senate the last time around.

I yield the floor.

#### RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER (Mr. MANCHIN). The Republican leader is recognized.

#### NATIONAL GUARD

Mr. MCCONNELL. Mr. President, yesterday evening, we learned that some of the National Guard forces who were helping protect the Capitol Complex were being made to rest in parking garages between their shifts. I don't think a single Senator feels that was acceptable. I am glad the situation was resolved, and I hope we learn exactly what happened.

In that regard, I want to thank all the National Guard, including more than 300 Kentucky Guardsmen, and local and Federal law enforcement who helped supplement our very own Capitol Police in the wake of January 6. Your Congress and your country appreciate all you have done to secure the Capitol and the inauguration.

Later today, I will have the honor of meeting a number of my Kentuckians who have been helping out here at the Capitol. It is going to be the highlight of my day.

In the near future, Congress needs to smartly transition toward a more sustainable security presence. Keeping the Capitol safe cannot and will not require huge numbers of uniformed troops and vast systems of emergency fencing to remain in place forever. With the inauguration behind us, we should find the right middle ground between the unacceptable lapses 3 weeks ago and the extraordinary short-term measures that have been put in place

since that time. In the meantime, we need to make darn sure that we look after the men and women who look after us.

#### FILIBUSTER

Mr. MCCONNELL. Now, Mr. President, on a totally different matter, while business proceeds on the floor, the Democratic leader and I are continuing to flesh out the structure of this 50-50 Senate.

When Leaders Lott and Daschle wrote a similar agreement 20 years ago, there wasn't a need at all to reaffirm the basic standing rules that govern legislation here in the Senate. It was safely assumed that no majority would break this rule for short-term gain.

Floor remarks surrounding those 2001 discussions specifically cite the legislative filibuster as an important and unquestioned part of the backdrop that lay beneath the negotiations on the finer details. It was assumed no one would ever take that step.

After the fact, Leader Daschle, the Democrat, praised the legislative filibuster as a crucial rule. President Biden has praised this distinctive feature of the Senate on many occasions.

Our current Democratic colleagues used it liberally—liberally—over the last several years when they were in the minority. More than two dozen signed a bipartisan letter in 2017 saying our Republican majority should not break the rule by brute force. Let me say that again. Two dozen Democrats signed a bipartisan letter in 2017 saying our Republican majority should not break this rule by brute force. I agreed. I didn't do it. President Trump was not happy with that. He tweeted against me numerous times because I didn't put an end to the legislative filibuster. So the Democrats used it constantly, as they had every right to. They were happy to insist on a 60-vote threshold for practically every major bill I took up.

So we will continue to request that our Democratic colleagues reaffirm this standing rule of the Senate, which they have been happy to use on many occasions, I can attest. If we are going to truly replicate the 2001 agreement, we need to reaffirm this crucial part of the foundation that lay beneath it.

#### IMPEACHMENT

Mr. MCCONNELL. Mr. President, yesterday I also shared a proposal for the pretrial steps in the Senate impeachment process that appears to be headed our way and, as I understand it, will be headed our way on Monday. By Senate rules, if the article arrives, we have to start a trial right then.

This impeachment began with an unprecedentedly fast and minimal process over in the House. The sequel cannot be an insufficient Senate process that denies former President Trump his due process or damages the

Senate or the Presidency itself. Senate Republicans strongly believe we need a full and fair process where the former President can mount a defense and the Senate can properly consider the factual, legal, and constitutional questions at stake.

For that reason, we suggest the House transmit this article next Thursday, but that apparently is going to be next Monday; that former President Trump's answer and the House's pretrial brief, I suggested, be due on February 4; and that the former President's pretrial brief be due, I suggested, on February 11. That timeline would have provided the Senate some more floor time before we step fully into the unknown of a trial—which, by the way, would have been of substantial benefit to the incoming administration and allowed them to get more of their Cabinet confirmed, on which we are cooperating as best we can to expedite.

#### NOMINATIONS

Mr. McCONNELL. Finally, Mr. President, on one final matter regarding nominees, we are considering President Biden's nominees to key Cabinet posts.

On Wednesday, Admiral Haines was confirmed as Director of National Intelligence on a big bipartisan vote, including my own. We hope to be able to consider Tony Blinken to be the Secretary of State early next week.

Today, we are considering GEN Lloyd Austin, President Biden's nominee to serve as Secretary of Defense. I voted to approve the waiver that would allow him to serve in this post yesterday, notwithstanding the 7-year cooling-off period after military service, and I will be voting in favor of his confirmation.

I am voting yes because the nominee is clearly qualified and because Presidents should get real latitude to fill their teams with qualified and mainstream people of their choosing. At the same time, the Senate should pause and reflect on the fact that we will have begun two consecutive Presidential administrations by issuing a waiver to a four-star general and former CENTCOM commander to lead the Pentagon.

The Armed Services Committee held a hearing last week to examine the waiver and the current state of civil-military relations at the Pentagon. I expect the committee will continue to pay close attention to this important issue in the months ahead and will investigate steps that Congress can take to help restore balance over at the Pentagon.

The law that we keep waiving actually exists for a good reason. Civilian control of the military is a fundamental principle of our Republic. We emphatically do not want high-ranking military service to become a tacit prerequisite for a civilian leadership post over at the Department of Defense.

It is not just about a simplistic fear that the military will end up running itself. To the contrary, many experts

worry that military leaders' appropriate fixation on being nonpolitical may not prepare them for the job, to forcefully fight for our armed services amid the political rough-and-tumble in the executive branch and here in Congress. To put it another way, they are taught from the beginning to stay out of politics entirely. But we do want a Secretary of Defense who is willing to engage in the issue-based discussions that we have related to the Department.

Nevertheless, I will vote today to confirm a clear patriot with an impressive career, but I will cast that vote with the understanding that our new Secretary of Defense specifically commits to balancing civil-military relations, empowering civilian leaders at the Pentagon, and playing an active role in the inherently political budget process to get our forces what they need. Our intensifying competition with China, Russia, and all the other threats we face demand nothing less.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### EXECUTIVE SESSION

#### EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The senior assistant legislative clerk read the nomination of Lloyd James Austin, of Georgia, to be Secretary of Defense.

The PRESIDING OFFICER. Under the previous order, there will be 10 minutes of debate equally divided in the usual form.

#### NOMINATION OF LLOYD JAMES AUSTIN

Mr. PAUL. Mr. President, our Founding Fathers believed strongly in the civilian control of our military. Having escaped from the tyranny of the British crown, they did not want the powers of government and military to be fused. In America, the people would control their Armed Forces. This standard has endured, and was enshrined in law in 1947. Congress had to pass a waiver to the 1947 law in 2017, and we are being asked to do it again in 2021. I hope that this is the last time Congress will be asked to pass such a waiver.

Civilian control of the military goes beyond the basic question of how long ago a nominee wore the uniform. It is also a question of whether the nominee

is enmeshed in the interests of our vast defense contracting industry, an industry whose bottom line depends on an expansive American military posture and, with it, an ever-growing defense budget. Going from firing the missiles to selling the missiles is technically a move into a civilian role, but nothing more. It is every bit as corrosive to the principle of civilian rule for the head of the Pentagon to churn from the military to the boardroom to the Pentagon, working with many of the same people at every step along the way.

General Austin retired from the Army in 2016, and he immediately joined the board of United Technologies, which was acquired by Raytheon. He was very well-compensated for his work there, and is reportedly due a buy-out of up to \$1.7 million when he leaves Raytheon and his other work and returns to the Pentagon. All we are doing by confirming these types of nominees, no matter their other qualifications, is tightening the ever-increasing bonds between the military and the contractors who serve it. It is getting hard to see where one stops and the other begins. No pledge of recusal from a nominee will solve this larger problem. We are not limited to selecting our Secretary of Defense from the world of defense contractors, and our country would be better off if we stopped. However, with regard to experience and expertise, I do not question General Austin's qualifications and will vote to allow the President his choice.

Mrs. FEINSTEIN. Mr. President, I rise today in support of General Lloyd Austin's confirmation to be Secretary of Defense, and I urge my colleagues to support his nomination in the vote we are about to take.

General Austin has proven through his 41-year military career that he is extremely capable of leading our military as they confront multiple challenges.

First, General Austin is a proven leader that will provide stability within our military ranks. After 4 years of tumultuous leadership under the Trump administration, our troops deserve a steady hand to lead them in the defense of our Nation.

Moreover, our allies need a Secretary of Defense who speaks reliably on behalf of the President.

Second, General Austin brings a wealth of experience to counter global defense challenges. He oversaw U.S. and coalition forces in Iraq, served as a Vice Chief of Staff of the Army where he worked to increase diversity in the highest ranks of our military, and commanded U.S. Central Command in its fight against ISIS and other regional threats.

Third, General Austin's previous appointments to the Joint Staff and as Vice Chief of Staff of the Army prepared him to tackle strategic issues in the Department of Defense. He has committed to filling key positions with personnel that bring civilian expertise,